IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.R. No.2786 of 1989

Date of Decision:21.2.2007.

Balraj Kumar

....Petitioner.

Versus

Sarwan Singh

...Respondent.

CORAM : Hon'ble Mr. Justice Hemant Gupta.

Present:- Mr.Jaspal Singh,Advocate
for the petitioner.

Mr.Ashok Aggarwal, Sr. Advocate with
Mr.Alok Jain,Advocate,
for the respondent.

HEMANT GUPTA, J.(ORAL)

The challenge in the present revision petition is to the order passed by the learned Rent Controller dated 21.2.1989 whereby an application for setting aside the ex-parte eviction order dated 2.6.1988 was dismissed.

Admittedly, the respondent-landlord sought the eviction of the petitioner on the ground that he is in arrears of rent. After passing of the ex-parte ejectment order, the petitioner moved an application for setting aside the said eviction order which has been dismissed by the learned trial Court.

It was the case of the petitioner that he came to know about the said eviction order on 3.8.1988, but the learned trial Court found that the tenant when appeared as witness has not deposed that when he came to know about the eviction order. Therefore, the Court found that there

is no circumstance from which it could be inferred that application for setting aside ex-parte order of ejectment is filed within 30 days from the date of knowledge. On merits, learned Rent Controller has found that the application seeking setting aside of ex-parte order is vague and indefinite and that it is not necessary to send summons through registered covers as the provision of Code of Civil Procedure do not apply in eviction proceedings.

The petitioner has sought the setting aside of ex-parte order on the ground that he was never served with the process of eviction proceedings. The petitioner has been served through affixation, after the report of refusal was received by the Court. Admittedly, the landlord has not examined the process server or the witness who has witnessed the refusal by the petitioner. Therefore, there is nothing to doubt the testimony of tenant as he was not served with the process of eviction proceedings.

Apart from all these facts, the Hon'ble Supreme Court in **Rakesh Wadhawan Vs. M/s Jagadamba Industrial Corporation,** 2002 SC 2004, has held that the learned Rent Controller is to assess the rent, interest and costs in a petition where the eviction is sought on the ground of non-payment of arrears of rent. Admittedly, the said procedure has not been carried out by the learned Rent Controller.

Consequently, I am of the opinion that the order passed by learned Rent Controller suffers from illegality or irregularity and cannot be

sustained in law. Consequently, ex-parte eviction order dated 2.6.1988 is set aside. Learned trial Court is directed to decide the petition in accordance with law. Parties through their counsel are directed to appear before the learned Rent Controller on 26.3.2007.

(HEMANT GUPTA)
JUDGE

21.2.2007.
Reema